

(i) A significant management control issue; or

(ii) Questioned costs of \$10,000 or more due to an audit finding (see Subpart E-Auditor, paragraph 510 of OMB Circular No. A-133).

(3) NASA contracting officers will maintain a dialogue with DOD Administrative Contracting Officers (ACO) who have been delegated activities on NASA contracts. A review will be conducted no less frequently than semi-annually, and the status and disposition of significant audit findings will be documented in the contract file.

(e)(1) The terms “resolution” and “disposition” are defined in Appendix A of NPG 1200.1.

(2) The resolution and disposition of OMB Circular No. A-133 audits are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsibility of the procurement officer administering that award.

(ii) Audit findings having a Governmentwide impact are the responsibility of the cognizant Federal agency responsible for oversight. For organizations subject to OMB Circular No. A-133, there is either a cognizant agency or an oversight agency. The cognizant agency is the Federal agency that provides the predominant amount of direct funding to the recipient organization unless OMB makes a specific cognizant agency for audit assignment. To provide for the continuity of cognizance, the determination of the predominant amount of direct funding will be based on the direct Federal awards expended in the recipient's fiscal years ending in 1995, 2000, 2005, and every fifth year thereafter. When there is no direct funding, the Federal agency with the predominant indirect funding is to assume the oversight responsibilities. In cases where NASA is the cognizant or oversight Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the Center having the largest amount of direct funding, or, if there is no direct funding, the largest amount of indirect funding for the audited period. A copy of the memorandum dispositioning the findings shall be provided by each Center having resolution responsibility for the particular report

to the Headquarters OIG office and Code HC.

[63 FR 3652, Jan. 26, 1998]

### Subpart 1842.74—Earned Value Management

SOURCE: 64 FR 10574, Mar. 5, 1999, unless otherwise noted.

#### 1842.7401 Earned Value Management Systems (EVMS).

When an offeror or contractor is required to provide an EVMS plan to the Government in accordance with NASA Policy Directive (NPD) 9501.3, Earned Value Management, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO) to obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

#### 1842.7402 Solicitation provisions and contract clauses.

(a) When the Government requires Earned Value Management, the contracting officer shall insert:

(1) The provision at 1852.242-74, Notice of Earned Value Management System, in solicitations; and

(2) The clause at 1852.242-75, Earned Value Management System, in solicitations and contracts.

(b) The contracting officer shall insert the clause at 1852.242-76, Modified Cost Performance Report, in solicitations and contracts requiring modified cost performance reporting (see NPD 9501.3, Earned Value Management).

(c) The contracting officer shall insert the provision at 1852.242-77, Modified Cost Performance Report Plans, in solicitations for contracts requiring modified cost performance reporting (see NPD 9501.3).

## PART 1843—CONTRACT MODIFICATIONS

### Subpart 1843.2—Change Orders

Sec.

1843.205 Contract clauses.

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## 1843.205

### Subpart 1843.70—Undefinitized Contract Actions

- 1843.7001 Definitions.
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### Subpart 1843.71—Shared Savings

- 1843.7101 Shared Savings Program.
- 1843.7102 Solicitation provision and contract clause.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 62 FR 14022, Mar. 25, 1997, unless otherwise noted.

### Subpart 1843.2—Change Orders

#### 1843.205 Contract clauses.

As authorized in the prefaces of clauses FAR 52.243-1, Changes—Fixed Price; FAR 52.243-2, Changes—Cost Reimbursement; FAR 52.243-3, Changes—Time-and-Material or Labor-Hours; and FAR 52.243-4, Changes, the period within which a contractor must assert its rights to an equitable adjustment may be varied not to exceed 60 calendar days.

#### 1843.205-70 NASA contract clauses.

(a)(1) The contracting officer may insert in contracts a clause substantially the same as 1852.243-70, Engineering Change Proposals, when ECPs are expected. Paragraphs (c) and (d) of the basic clause and Alternate I of the clause shall be changed to reflect the specific type of contract. A local format may be substituted for the MIL-STD-973 format.

(2) If it is desirable to preclude a large number of small-dollar, contractor-initiated engineering changes and to reduce the administrative cost of reviewing them, the contracting officer shall use the clause with its Alternate I.

(3) If the contract is a cost-reimbursement type, the contracting officer shall use the clause with its Alternate II.

(b) The contracting officer may insert a clause substantially as stated at 1852.243-72, Equitable Adjustments, in solicitations and contracts for—

(1) Dismantling, demolishing, or removing improvements; or

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(2) Construction, when the contract amount is expected to exceed the simplified acquisition threshold and a fixed-price contract is contemplated.

[62 FR 14022, Mar. 25, 1997, as amended at 63 FR 17339, Apr. 9, 1998]

### Subpart 1843.70—Undefinitized Contract Actions

#### 1843.7001 Definitions.

*Undefinitized contract action (UCA)* means a unilateral or bilateral contract modification or delivery/task order in which the final price or estimated cost and fee have not been negotiated and mutually agreed to by NASA and the contractor. (Issuance of letter contracts and their modifications are governed by subpart 1816.6.)

#### 1843.7002 Policy.

Undefinitized contract actions shall be executed by contracting officers on an exception basis and shall be limited to the minimum urgent requirements. The contract file for all UCAs shall be documented to justify issuance and shall include a Government estimate for the changed requirements.

#### 1843.7003 Procedures.

(a) Issuance of undefinitized contract actions with a Government estimated cost or price over \$1,000,000 must be approved in writing by the Center Director. This approval authority is not delegable. Issuance of undefinitized contract actions with a Government estimated cost or price less than or equal to \$1,000,000 shall also be minimized but may be approved on an exception basis in accordance with installation procedures.

(b) (1) Undefinitized contract actions exceeding \$1,000,000 approved by the Center Director shall be issued as bilateral agreements setting forth a ceiling price or “not to exceed” estimated cost figure for the changed contractual requirements. For fixed price contracts the negotiated price for the changed contract requirements shall not exceed the established ceiling price. In the case of cost type contracts any costs eventually negotiated for the changed requirements in excess of the “not to exceed” estimated cost figure shall be

non-fee bearing. The ceiling price or “not to exceed” estimated cost figures shall be separately identified in the UCA instrument from the pricing structure of the basic contract.

(2) The Center Director may waive the ceiling price or “not to exceed” estimated cost figure and bilateral agreement requirements prior to UCA issuance on the basis of urgency. This waiver authority is not delegable. Any waivers shall be documented in the contract file.

(c) The changed contractual requirements set forth in the UCA shall be clearly defined and shall be limited to the minimum effort required to satisfy urgent program requirements while a cost proposal is prepared, analyzed and negotiated.

(d) For undefinitized contract actions with a Government estimate greater than \$1,000,000 and not excepted under subpart 1843.7004, a 180 day funding profile shall be obtained from the contractor prior to execution of the undefinitized contract action.

(e) Undefinitized contract actions with a Government estimated cost or price greater than \$1,000,000 shall include a requirement that the change shall be separately accounted for by the contractor to the degree necessary to provide the contracting officer visibility into actual costs incurred pending definitization. The contracting officer may waive this requirement for individual actions if there is a documented finding that such accounting procedures would not be cost effective. Any such waiver shall not affect existing NASA Form 533 or other financial reporting requirements set forth in the contract.

#### **1843.7004 Exceptions.**

(a) Exceptions to the requirement for Center Director approval for issuance of undefinitized contract actions are—

(1) Modifications to facilities contracts;

(2) Modifications to construction contracts using Construction of Facilities funding;

(3) Urgent modification resulting from Shuttle manifest changes or that involve immediate issues of safety or damage/loss of property;

(4) Modifications to decrease the contract value; or

(5) Modification to letter contracts.

(b) The contract file for any of the modifications in paragraph (a) of this section shall cite the exception and include complete supporting rationale for its applicability.

#### **1843.7005 Definitization.**

(a) Undefinitized contract actions should be sufficiently complete and detailed as to enable the contractor to begin immediate preparation of a cost proposal for the changed requirement. The NASA goal is to definitive UCAs within 180 from date of issuance.

(b) Whenever possible, pre-change study efforts or engineering change proposals (ECPs) shall be utilized to negotiate and definitize changes prior to issuance.

### **Subpart 1843.71—Shared Savings**

#### **1843.7101 Shared Savings Program.**

This subpart establishes and describes the methods for implementing and administering a Shared Savings Program. This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives. NASA will benefit as the more efficient business practices that are implemented lead to reduced costs on current and follow-on contracts. In return, contractors are entitled to share in cost savings subject to limits established in the contract. The contracting officer may require the contractor to provide periodic reporting, or other justification, or to require other steps (e.g., cost segregation) to ensure projected cost savings are being realized.

#### **1843.7102 Solicitation provision and contract clause.**

The contracting officer shall insert the clause at 1852.243-71, Shared Savings, in all solicitations and contracts expected to exceed \$1,000,000, except those awarded under FAR part 12, NRA and AO procedures, or the SBIR and STTR programs.